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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-25177-2024 (O&M)
Date of Decision: 30.09.2024

Malkit Singh

....Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Amarbir Singh Salar, Advocate
for the petitioner.

Mr. Navneet Singh, Sr. DAG, Punjab.

Mr. S.K. Singla, Advocate
for the caveator/respondent No.2.

HARSH BUNGER, J. (Oral)

1. Petitioner (Malkit Singh) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India *inter alia* seeking a writ in the nature of Certiorari for setting aside the order dated 18.04.2024 (Annexure P-5) passed by the learned Financial Commissioner, Punjab.
2. Briefly, on demise of Sh. Sukhdev Singh, previous *lambardar* (Scheduled Caste) of Village Bishanpur Channa, Tehsil and District Patiala, proceedings were initiated for filling up the vacancy. In pursuance of the proclamation conducted in the village for calling upon the application for

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filling up the aforesaid vacancy, two applications were received i.e. one from the petitioner and another from respondent No.2 (Aman Yuvraj Singh). The Assistant Collector 2nd Grade, Patiala, recommended the name of respondent No.2 for appointment to the aforesaid vacancy whereas the Assistant Collector 1st Grade, Patiala recommended the name of the petitioner for appointment to the aforesaid vacancy.

3. Learned Collector, Patiala, vide order dated 25.04.2018 (Annexure P-3) appointed petitioner as the *lambardar* (S.C.) of Village Bishanpur Channa.

4. Feeling aggrieved against the aforesaid order dated 25.04.2018 (Annexure P-3), respondent No.2 preferred an appeal before the learned Commissioner, Patiala Division, Patiala (in short 'the Divisional Commissioner') which was dismissed vide order dated 18.12.2020 (Annexure P-4).

5. Still aggrieved, the respondent No.2 preferred a Revision (ROR No.196 of 2021) before the learned Financial Commissioner, Punjab, which came to be allowed vide impugned order dated 18.04.2024 (Annexure P-5), whereby the order passed by the learned Collector as well as the learned Commissioner were set aside and the matter has been remanded to the learned Collector, Patiala for deciding the case afresh.

6. In the aforementioned circumstances, the petitioner has filed the instant Writ Petition before this Court for the reliefs as noticed above.

7. Learned counsel for the petitioner submits that the learned Financial Commissioner has erred in law and fact in allowing the revision petition filed by respondent No.2 without appreciating that in the matter of appointment of *lambardar*, the choice of Collector is not to be lightly

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interfered with unless there is any patent illegality or perversity therein. It is submitted that the petitioner was appointed as the *lambardar* (S.C.) by the learned Collector after appreciating the relative merits/de-merits of the candidates and finding the petitioner as more suitable candidate. It is further submitted that the petitioner is more meritorious than respondent No.2. Accordingly, it is prayed that the impugned order be set aside and the order passed by the learned Collector, appointing petitioner as the *lambardar* (S.C.) of Village Bishanpur Channa, be maintained.

8. Per contra, learned counsel appearing for the caveator/respondent No.2 has opposed the submission made on behalf of the petitioner by submitting that respondent No.2 is having better merits than the petitioner, however, the learned Collector passed a totally illegal and perverse order while appointing petitioner as the *lambardar*. It is submitted that the petitioner is in unauthorized possession of the Panchayat land and on the relevant date, he was also a defaulter of the Ranbirpura Multipurpose Co-operative Society Ltd. It is therefore, contended that the learned Financial Commissioner after appreciating the facts, has rightly set aside the order passed by the learned Collector as well as the learned Commissioner and has remanded the matter to the learned Collector for deciding the matter afresh. With the aforesaid submissions, prayer has been made for dismissal of the instant Writ Petition.

9. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

10. Here, it would be apposite to state the merits/ de merits of the candidates (as noticed by the learned Collector), which can be summed up as under :-

<i>S. No.</i>	<i>Particulars</i>	<i>Petitioner</i> <i>(Malkit Singh)</i>	<i>Resp. No.2</i> <i>(Aman Yuvraj Singh)</i>
<i>1</i>	<i>Age</i>	<i>50 years</i>	<i>29 years</i>
<i>2</i>	<i>Educational qualification</i>	<i>8th pass</i>	<i>12th pass</i>
<i>3</i>	<i>Recommended by</i>	<i>Assitant Collector 1st Grade, Patiala</i>	<i>Assitant Collector 2nd Grade, Patiala</i>
<i>4</i>	<i>De merits</i>	<i>Alleged to be in unauthorized possession of Shamlat land.</i> <i>Defaulter of the Ranbirpura Multipurpose Co-operative Society Ltd.</i>	<i>---</i>

10.1 A bare perusal of the above chart would clearly indicate that respondent No.2 (Aman Yuvraj Singh) is younger in age and more educated than the petitioner.

11. In the present case, the petitioner was appointed as *lambardar* by the learned Collector and an appeal filed by respondent No.2 against Collector’s order was dismissed. However, the learned Financial Commissioner allowed the revision petition filed by respondent No.2, whereby learned Collector’s order as well as learned Commissioner’s order were set aside and the matter was remanded to the Collector for fresh decision by observing as under:

“5. I have heard Ld. counsel for both the parties, gone through their submissions and perused the order of the Courts below. I find that the counsel for the petitioner place on record the various documentary evidences which indicates that respondent is defaulter of financial institution and is in illegal possession of Gram Panchayat land as well. On the other hand, the counsel for the respondent argued that choice of Collector is final and should not be interfered. After going through the submissions of both the parties, I am of the view that orders passed by both the courts below is not based on true facts and same are illegal and perverse as in the present case petitioner is

more meritorious in terms of education and having clean record. Further, Father of the petitioner was previous lambardar as well. On the other hand, the respondent is in illegal possession of the gram panchayat land and is defaulter of Ranbirpura Multipurpose Cooperative Society Ltd. as a notice dated 31.12.2017 for depositing the loan amount has also issued to the respondent. The petitioner is also alleging that respondent is working as a driver and remains out side the village. These above said facts require reconsideration. While making appointment of lambardar, it is the duty of the revenue authorities that only a suitable candidate should be appointed for the post of Lambardar. The Hon'ble High Court in the case titled as Mohinder Pal versus The Financial Commissioner, Haryana & others report as 2013 (3) L.A.R. 95 (P&H) has held that "Endeavour of the revenue authorities should be to appoint a person of clean image and most suitable out of the contesting candidates." But the Commissioner as well as the District Collector has failed to consider these aspects. Thus, the Order passed by both the lower courts suffers from illegality and perversity and requires interference of this Court.

6. Therefore, keeping in view the aforesaid facts and circumstances of the case, I accept the present revision petition and the order dated 18.12.2020 passed by the Commissioner, Patiala Division, Patiala and the order dated 25.04.2018 passed by the District Collector, Patiala is set aside and the case is remanded back to the District Collector, Patiala to decide the matter afresh keeping in view the aforesaid observation as well as settled law after hearing both the parties. Copy of this order be communicated to the courts below. File be consigned to the record room."

12. A perusal of the above extracted order passed by the learned Financial Commissioner would indicate that the Financial Commissioner found that respondent No.2 was having more merits than the petitioner and it

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record indicates that the petitioner herein is a defaulter of Financial Institution and is in illegal possession of Gram Panchayat land as well. As regards the defaulter of the Ranbirpura Multipurpose Co-operative Society Ltd. is concerned, reference has been made to a notice dated 31.12.2017 issued to the petitioner and another allegation was noticed that the petitioner was working as a driver and therefore he remains outside the Village, which according to the Financial Commissioner requires reconsideration.

13. Before this Court, learned counsel for the petitioner has primarily argued that the Financial Commissioner should not have set aside the Collector's order appointing petitioner as the *lambardar*, however as regards the unauthorized possession over the Panchayat land, no justification is forthcoming. In order to counter the allegation that the petitioner is a defaulter of the Co-operative Society, the petitioner has relied upon a certificate (Annexure P-7), which reads as under:

“SOCIETY CERTIFICATE

Certified that Sh. Malkit Singh S/o Sh. Maghar Singh Resident of Bishanpura Channa Tehsil Patiala, District Patiala is a bonafied member of the Ranbirpura Co-op. Agri. Service Society and he is not defaulter for his dues towards the Society as per account books of the Society.

1. *This certificate has been furnished on the careful examination of the account books of the society. There is nothing due against him as per record of the society.*
2. *We will not make any advance to the said person during the currency of bank loan.*
3. *He is not a member of the Co-op. Society.*

Secretary

*The Ranbirpura
Multipurpose Cooperative
Society Limited Ranbirpura*

Dated: 09.06.2018”

13.1 The above extracted certificate would clearly indicate that the same has been issued on 09.06.2018 whereas, the Collector's order was passed on 25.04.2018. Furthermore, as per Clause 3 of the above extracted certificate it is stated that the petitioner is not a member of the Co-operative Society.

13.2 In view of the above, the attention of learned counsel for the petitioner was drawn to the observation made by the learned Financial Commissioner in its order dated 18.04.2024, that a notice dated 31.12.2017 was issued to the petitioner for depositing the loan amount, to which learned counsel for the petitioner called upon the petitioner, who was present in person in Court to answer the same. Initially, the petitioner denied that he had taken any loan, however, on being asked again, petitioner stated that he had taken a loan which he had repaid subsequently, however, he could not produce any document in that regard nor any date is forthcoming as to when he repaid the loan amount.

14. Be that as it may, the contradictory statements made by the petitioner before this Court raises a doubt as to whether the certificate (Annexure P-7) is a genuine certificate or not. Furthermore, the certificate was issued on 09.06.2018 whereas the learned Collector appointed the petitioner on 25.04.2018 (Annexure P-3). Apparently, the certificate dated 09.06.2018 is subsequent to the date of the Collector's order.

15. Even on comparison of the candidates, it is seen that respondent No.2 is younger in age and more educated than the petitioner. In ***Mahavir Singh v. Khiali Ram and Others, 2009(1) RCR (Civil) 757***, Hon'ble Supreme Court held that with regard to the appointment of a

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Lambardar in the State of Punjab, age of a candidate is a relevant factor.

16. Keeping in view the totality of circumstances, I am of the considered opinion that learned Financial Commissioner has rightly remanded the matter to the learned Collector for fresh decision as the same requires reconsideration at the Collector’s level. I do not find any merit in the instant Writ Petition and the same is accordingly dismissed.
17. All pending applications (if any) shall also stand closed.

30.09.2024
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(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No